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Idaho Conservation League

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Ms. Cheryl Probert, Forest Supervisor
Nez Perce-Clearwater National Forests
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June 23, 2016

Re: Scoping Comments on the Small NEPA Project Proposals (May 27, 2016 scoping notice) – including Blue Ribbon Test Drilling (Red River RD), Lamb Creek Road Use Permit (Palouse RD), National Forest System Road 4716-A Road Easement (Palouse RD), National Forest System Roads 5216E and 5216E-1 Road Use Permit (North Fork RD), National Forest System Roads 5326 and 5326-A Road Use Permit (North Fork RD), and Rebel/Beat Street Placer Exploration (Salmon River RD)

Dear Cheryl:

Thank you for considering our scoping comments on these projects. Since 1973, the Idaho Conservation League has been Idaho's voice for clean water, wilderness, and quality of life. The Idaho Conservation League works to protect these values through public education, outreach, advocacy and policy development. As Idaho's largest state-based conservation organization, we represent over 25,000 supporters who have a deep personal interest in ensuring that management activities, special use permits, campground upgrades, and mining exploration plans are designed to avoid, minimize or mitigate impacts on our water, wildlands, and wildlife.

Our comments below focus on the Blue Ribbon Test Drilling (Red River RD) and Rebel/Beat Street Placer Exploration (Salmon River RD) projects. However, we also have some specific comments on other projects including the Lamb Creek Road Use Permit (Palouse RD), National Forest System Road 4716-A Road Easement (Palouse RD), National Forest System Roads 5216E and 5216E-1 Road Use Permit (North Fork RD), and the National Forest System Roads 5326

and 5326-A Road Use Permit (North Fork RD) included in the Small NEPA scoping letter of May 27, 2016.

With regards to the AVISTA Buried Electrical Lines (Red River Ranger District (RD), Nat Brown Fencing (Palouse RD), Peasley Creek Culvert Replacement Project (Salmon River RD), Potlatch River Boundary Fence Extension (Palouse RD), Wildfire Tree Planting – Lochsa 2 (Lochsa – Powell RD), and Wildfire Tree Planting – North Fork (North Fork RD) projects we do not have any major concerns, but do wish to remain on the mailing lists to receive copies of the Decision Memos and/or future correspondence with regards to these projects.

In general, we appreciate the efficiency offered by issuing a Small-NEPA comment letter. Additionally, we appreciate that information provided about these projects is more substantial than past projects of a similar scope. However, we encourage you to provide more detailed information on some of the more significant projects. In particular, we are concerned that the mining exploration projects, and road use permits warrant additional information in the interest of soliciting meaningful input. As a result, we encourage you to provide a supplemental comment period on each of these projects to involve the public to the extent practicable.

With regards to each of these topics it would be useful to better understand how riparian buffers might be impacted, what level of road construction/reconstruction is anticipated, how water quality might be impacted, whether discharges are anticipated into waters of the U.S., how mining work will be sequenced, whether non-system roads are being authorized (constituting road construction), whether existing roads are being reclassified, upgraded and/or modified, whether ESA-listed species are present in the project area, whether roadless and/or Wilderness resources will be impacted, whether prior related and/or connected activities have occurred in the project area, and what extraordinary circumstances may be present regardless of the anticipated degree of impact to those resources.

With regards to special road use permits, as we have pointed out in past comments, activities approved via special use permits should be considered connected actions pursuant to NEPA. As such, the impacts associated with activities on lands administered by the Idaho Department of Lands and other entities (including but not limited to logging, road construction, application of pesticides, herbicides, and other activities) must be disclosed and analyzed prior to approval of the Road Use Permit by the Forest Service. Impacts to these resources could warrant the development of an EA or an EIS, however it is impossible to know based on the lack of information provided in the scoping notice.

Finally, analyses for each individual project should consider how the project is consistent with various management directions, including but not limited to the Endangered Species Act, Nez Perce and Clearwater National Forest Plans, Clean Water Act and any other relevant laws and agency direction.

With regards to the Blue Ribbon Test Drilling and Rebel/Beat Street Placer Exploration proposals we have more significant concerns. There is no other permitted use of our public lands that has such a dramatic and permanent impact on the landscape, soils, water and wildlife than mining. Although the proposed actions may be limited to exploring for minerals, we would like to ensure that the Forest adequately prevents water quality degradation and disturbance of wildlife and habitat. All mining activities and explorations should be stringently regulated and monitored.

We are concerned about categorically excluding these types of operations from further environmental review and strongly recommend that the Forest Service conduct an Environmental Analysis at a minimum. More specific comments regarding these projects can be found below.

Once again we thank you for the opportunity to submit scoping comments on these projects. Please keep us on the mailing list for all documents related to these projects. Feel free to contact either of us if you have any questions about our comments.

Sincerely,

/s/ Mackenzie Case
Mackenzie Case
Public Lands Intern

/s/Jonathan Oppenheimer
Jonathan Oppenheimer
Senior Conservation Associate

Attachments:

Decision Memos for Nez Perce and Clearwater National Forests CE mining Projects: New Upper Lolo 1 Exploration, Klondike Mine Drilling Exploration, March 1, 2, 3 Exploration, Julie Lode Exploration, Miscellaneous Mining Plans of Operations, Pioneer Mine Exploration, Tough Luck Exploration, Mustard Seed Exploration, J&D and Homestead Placer, Little Papoose Mining Exploration, Little Papoose Bulk Sampling, Blue Quartz Placer Exploration, Bear Track Placer, Candlearia Mineral Exploration, Imperial Creek Placer Exploration, Max #1 Lode Exploration, Old Shoe Lode Exploration, Rock Bizarre Mineral Materials, Second Chance Placer, Silver Lode Exploration, and the Pasadena/Frank Peck Lode Exploration projects

Blue Ribbon Test Drilling and Rebel/Beat Street Placer Exploration Projects Comments

General Concerns

The Idaho Conservation League believes that these operations may have short-term impacts on this area and long-term consequences on water quality and wildlife.

In general, we appreciate that all activities for both projects would follow both the State of Idaho Mining BMPs and standard mitigation measures for mineral projects in the Nez Perce-Clearwater National Forests. These projects should also comply with all federal and state laws including the National Forest Management Act standards and guidelines, the Nez Perce-Clearwater National Forests Plans, Riparian Conservation Areas, PACFISH/INFISH guidelines, and the Clean Water Act.

Additional NEPA Review

Mining related activities are not environmentally benign. Mining activities have the potential to cause extreme harm to the local environment and also monopolize public land for long periods of time. In light of all of the concerns a project of this nature raises, it is clear to us that these proposals indeed require additional NEPA review and that the granting of a Categorical Exemption or CE would be inappropriate.

Water Quality

Mining exploration activities have a well-documented history of adversely impacting water quality and fish populations. The proposed action may be potentially incompatible with aquatic species inhabiting this watershed. Weed-free straw bales should line any drainages to protect streams from sedimentation and be removed upon completion of operations.

The effects of mining exploration activities on surface water and groundwater quantity and quality need to be determined for a full range of flow conditions. This geochemical analysis should include the following factors:

- preexisting water quality issues from previous mining activities
- sedimentation from roads and trails
- transportation of hazardous or toxic materials near streams
- on-site water needs
- source of water
- the depth and flow of water table
- the potential for household chemicals and toxins to leach into surface and ground waters
- water capture and subsequent leakage by trenches

- waste water discharge from site
- storm water runoff

We recommend conducting a baseline water quality analysis during low-flow conditions for water sources in the project area, as well as a baseline analysis downstream from the location. A baseline analysis in these locations will help the Forest Service more accurately identify risks to water quality and quantity, as well as monitor for contamination during the project activities.

We also recommend that the Forest Service monitor water quality downstream of the operations for seepage and turbidity. If visible turbidity downstream from the area is triggered by the project, operations should cease for further evaluation. Additionally, we recommend prohibiting mineral sampling and/or vegetation removal within at least 75 feet of stream channels, consistent with other similar proposals.

Water Quantity

In the Blue Ribbon Test Drilling Site, the claim operator will require between 500 to 1000 gallons of water per day per drill rig. We appreciate that any water use on Forest Service lands will require review by Forest Service Specialists and a water use permit from the Idaho Department of Water Resources. We also appreciate that the location of the drill sites are indicated on a map.

In the Rebel/Beat Street Exploration Project, the claim operator would like to pump water from a local stream to fill the sump/settling ponds from seasonal streams for drilling activities. We appreciate that the water would be recycled and a permit from the Idaho Department of Water Resources would be obtained prior to this process. We also appreciate that the location of the test holes are indicated on a map.

The scoping notice indicates that both project areas include some riparian vegetation, but doesn't disclose whether or not any of the proposed test or drilling sites are located in Riparian Habitat Conservation Areas. Any further details and/or clarification should describe how and whether impacts to RHCAs are anticipated, how soils, wetlands or other resources will be impacted, and whether any impacts to stream shade will be impacted. In addition, the BA/BE should detail how the project is consistent with PACFISH/INFISH standards and how riparian management objectives will be satisfied when the project is complete.

We appreciate that both exploration projects disclose potential mitigation measures. However, the scoping notice does not adequately indicate the impacts to aquatic resources would be impacted as a result of reductions in flow. Such water withdrawals may have adverse impacts on the water body from which the water would be withdrawn. The scoping notice also fails to disclose whether

activities will require motorized vehicles off-roads or trails. As a result, we encourage you to rescope the proposal after more specifics can be nailed down. We are concerned that the description of the proposal falls short of NEPA requirements to provide information to the extent practicable.

Storm-water permit

The operator will need to obtain a storm-water discharge permit to reduce erosion from the disturbed area.

Noxious Weeds

The scoping notice indicated that several motorized vehicles, including ATVs, excavators, 4x4 pickups, and other vehicles would be used for exploration activities. Motorized vehicles are significant vectors in the spread of noxious weeds. Seeds and plant material from invasive plants ride in on ATVs, excavators and trucks and are deposited along trails and roadways where they germinate, out compete native vegetation and increase the risk of fire.

Motorized vehicles also facilitate the spread of noxious weeds by creating seedbeds for these species by exposing mineral soil. User-created routes are particularly problematic in terms of their contribution to the spread of noxious weeds because significant soil disturbance is associated with these illegal and unauthorized routes. Secondly, user-created routes often penetrate into areas formerly undisturbed where native vegetation dominates. The scoping notice implies that both projects may require some road maintenance, trail use, and overland routes may be required. We ask that the Forest Service require the operator to avoid off-roading to avoid the spread of noxious weeds and damage of resources.

Due to the lack specific locations for test or drilling site access, it is not known if there are major noxious weed infestations within the project area. The Forest Service should survey the project area for noxious weeds and analyze the extent to which motorized vehicles are contributing to their spread.

The proposed action increases the possibility that noxious weeds will infest the area. We appreciate that all vehicles and equipment must be washed prior to being brought onto National Forestlands. We also recommend using a pressurized hose to dislodge noxious weed seeds before entering and leaving the project area. Disturbed soil and waste rock piles need to be reseeded with native plants, and weeded to prevent expansion of noxious weeds. Furthermore, the Forest Service should monitor the areas subjected to replanting for a full three years to ensure vegetation success.

Threatened and Endangered Species

The US Forest Service must submit a biological assessment on all possible threats to listed species and the USFWS and NMFS must approve the report with a "no jeopardy" finding. No incidental take permit should be allowed.

Bonding, Financial Assurance and Reclamation

We appreciate that a reclamation bond will be required for both projects. Under 36 CFR § 228, the agency should require a financial assurance that ensures reclamation would be completed in the event of abandonment of the site. The Forest Service should detail the amount, scope, and form of the financial assurance in the NEPA process to make certain that such a critical issue is subjected to public review and comment.

If an EA is issued, bonding costs need to be detailed in the EA for each alternative. The reclamation bond must be independent of the bond covering any other mining operations. The bond must be substantive enough to cover the worst possible impacts to the area's fragile ecosystem as well as the area surrounding the transportation route. Bonding should also be provided for possible spills of fuels and other hazardous materials along the roadsides. The bonding should reflect the impacts to the sensitive nature of this site and the listed species inhabiting the area. Bonding costs should be calculated according to Forest Service pricing, including the cost of renting and transporting equipment and wages for all workers and supervisors.

Reclamation should take place concurrently with the exploration operation. In the process, each drilling site should be restored to a more natural condition than presently exists. Any topsoil or large woody debris should be salvaged and replaced following operations. This includes refilling all trenches, stabilizing waste rock piles, lining and capping mining wastes, recontouring and revegetating the site, removing noxious weeds, and naturalizing the area. Only one test or drilling site should be open at any one time and reclamation efforts should be completed prior to initiating trenching at the next location. We appreciate that this measure is included in the Blue Ribbon Test Drilling Project. Complete reclamation should occur as soon as possible after operations cease. The bond must be sufficient to cover the worst possible impacts to the ecosystem as well as the areas surrounding the transportation route and processing site. These bonding calculations should be included in an environmental review and available for public comment and review.

Public Safety

The operator should post signs around the perimeter of the exploration area to inform recreational users of their project. The signs should be clearly visible, of adequate size, and ask recreational users not to enter the project area. The Forest Service should make sure that the operator informs the public during

equipment and fuel haul and uses pilot cars, flaggers and signs on National Forest roads utilized for these projects.

On Site Living

The Scoping Notice does not indicate whether the operators will be living at the project site during exploration. If they are, all garbage must be disposed of appropriately in a timely fashion to minimize interactions with wildlife. All food should be stored in bear-proof containers. All human waste should be disposed of properly in an approved sanitation facility. Burning of garbage should not be allowed.

As motorized equipment will be utilized likely including, but not limited to, excavators, pumps, ATVs, generators, trucks, etc., the Forest Service should regulate their use. Decibels should be monitored, fuel storage must be sufficiently stored and handled within secondary containment systems, and generators should be turned off at sunset to minimize noise levels and light levels according to Dark Sky principles. The Scoping Notice did not mention what the recreational uses in the area are or how they might be affected. The Forest Service should consider impacts to recreationists and require measures to avoid, minimize and mitigate these impacts.

Hazardous Materials

An appropriate sized spill kit should be on site for refueling. In addition, substance-specific spill kits should be available in all operating areas and be inspected regularly. These kits should include fuel containment equipment, including chemical absorbers and booms.

No hazardous materials should be stored on the Forest and on-site fuel quantities should be limited. While the scoping notice indicates that only 30 gallons of fuel or oil will be stored in the project areas, we recommend that they must be stored outside of RCAs.

We recommend that all motorized equipment have working mufflers and spark arrestors and that electrical equipment is properly insulated. Fire extinguishers should be inspected regularly throughout the project period and located in all vehicles. Handheld implements (shovels or axes) should be accessible at all operating locations. Hazardous wastes including grease, lubricants, oil, and fuels need to be disposed off off-site in an environmentally appropriate manner on a weekly basis.

“Category 8” Concerns

We are concerned about cumulative impacts and the use of the categorical exclusion set forth at 36 C.F.R. § 220.6(e)(8) (“Category 8”). Category 8 exempts certain short-term mineral investigations and incidental support

activities, among other activities, from undergoing full review under NEPA. We believe that it is improper for you to approve this project using Category 8 and must at a minimum prepare an EA.

First, it does not appear that the agency can utilize Category 8 in this case based on likely effects to ESA listed species, RHCAs, sensitive soils and other concerns. As the Ninth Circuit has held, an agency's decision to establish a category of actions that are excluded from full NEPA review can only be made with a full understanding of the significance of the impacts resulting from application of the category. *Sierra Club v. Bosworth*, 510 F.3d 1016, 1027 (9th Cir. 2007) ("The Forest Service must perform this impacts analysis prior to promulgation of the CE."). Of particular importance, "the Forest Service must perform a programmatic cumulative impacts analysis for the . . . CE." *Id.* at 1029. In *Bosworth*, the Ninth Circuit invalidated the Forest Service's reliance on a categorical exclusion that was promulgated without a complete analysis of cumulative and other impacts. The Court then enjoined projects approved pursuant to that categorical exclusion. *Id.* at 1026-1030. The same legal rule applies to the agency's failure to comply with the procedural and substantive requirements of the ESA.

The Ninth Circuit held that the Forest Service violated these requirements in adopting the 2003 Hazardous Fuels CE in *Bosworth*, because the agency failed to assess the cumulative impacts from future projects to be approved under the CE. As the court explained:

Relying solely on a project level analysis is inadequate because it fails to consider impacts from past, present, or reasonably foreseeable Fuels CE projects which may be located in close proximity, in the same watershed or endangered species habitat.

Bosworth, 510 F.3d at 1027. Moreover, the Ninth Circuit emphasized that cumulative impacts analysis "is of critical importance in a situation such as here, where the categorical exclusion is nationwide in scope and has the potential to impact a large number of acres." *Id.*, at 1028.

The same is true in the case of Category 8. The Forest Service never performed a direct, indirect or cumulative impacts analysis (or any of the required ESA consultation and analysis) on Category 8 -- routine, short-term mining investigations and their incidental support activities -- and the related provisions in Chapter 30 of the Forest Service Handbook regarding extraordinary circumstances.¹ As a result, impacts at the local, forest, state, and regional level

¹ The original version of Forest Service Handbook 1909.15, Section 31.2, including Category 8, was contained in a Federal Register Notice. 57 Fed Reg. 43180, 43209-10 (September 18, 1992). This Handbook section has been revised and reissued many times since then. In 2002, the Chapter was amended, in part, to change the criteria for the application of "extraordinary circumstances" related to

from the mineral investigation activities authorized or covered by Chapter 30 and Category 8 were never evaluated. As in *Bosworth*, the Forest Service never reviewed the significance factors required by NEPA in assessing whether its action -- adopting a categorical exclusion and the extraordinary circumstances provision -- may have significant impacts. Accordingly, because adoption of Category 8 and Chapter 30 violated NEPA and the ESA, the Forest cannot rely upon on those provisions for the approval of the proposed exploration projects.

Not only must you consider the cumulative impacts of this project currently being considered for approval under Category 8, but you must also consider the impacts of all projects previously approved using Category 8, which may have any cumulative impacts. Each of the Decision Memos issues pursuant to Category 8 are submitted as part of our comments with these projects, and the cumulative effects associated with these and any other projects must be considered. Furthermore, you must review any other past, present, or reasonably foreseeable impacts in your cumulative impacts analysis for these projects, including but not limited to: road construction, timber management, minerals exploration and development, livestock management, travel management, wildfire, prescribed fire, or other activities.

Cumulative impacts

The Forest Service must also analyze and disclose the direct and indirect cumulative effects of this project in conjunction with all past, present and reasonably foreseeable future actions, including additional mineral exploration projects in the area. We are concerned about the potential downstream impacts this exploration project may have on the watershed.

categorical exclusions. 67 Fed. Reg. 54622 (August 23, 2002). The latest revision to Chapter 30 occurred pursuant to a Federal Register Notice on February 15, 2007, 72 Fed. Reg. 7391. See 73 Fed. Reg. 43093 (July 24, 2008).